



INFORMATION TECHNOLOGY MANAGEMENT STUDY SUBCOMMITTEE

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November 24, 1999

To: Information Technology Management Study Subcommittee

From: Pam Joehler, Senior Fiscal Analyst

RE: Information Technology Governance – Montana Statutes

SUMMARY

This report identifies current statutes that address information technology (IT) governance and IT planning and budgeting in Montana state government. It provides the reader with a basic knowledge of the statutes that establish the framework for how IT is managed as a state resource in Montana. The report does not evaluate agency compliance with these laws.

Staff's observations regarding specific statutes are presented with each statutory reference, as appropriate. Broader observations are presented at the end of the report. Observations noted include a general lack of guiding principles and legislative oversight, widely varying planning requirements, and no permanent framework for connecting IT assets to the biennial budgeting process.

INFORMATION TECHNOLOGY DEFINED

Section 2-15-102(3), MCA defines data and information technology resources as:

“Data processing mainframe, microcomputer hardware, peripherals, software, special forms, personnel, facility resources, maintenance, training, electronically stored data, or other related resources.”

(Definition inserted into statute in 1987)

Section 2-17-501, MCA which describes the responsibilities of the director of the Department of Administration for data processing, includes two additional definitions that could fall under the category of ‘other related resources’:

1. “Central computer center” means any shared or sharable computer system and facilities provided by the department for use by government agencies; or computer operations and software development support services provided by the department.
2. “Statewide data network” means any telecommunications facility, circuits, equipment, or software administered by the department for the transmission of data from one computer to another by government agencies.

(Definitions inserted into statute in 1993)

LFD Observation: The definitions are fragmented, somewhat outdated, and vague.

INFORMATION TECHNOLOGY GOVERNANCE

At its October 1999 organizational meeting, the IT Subcommittee defined IT governance as “a formal framework for making and administering IT policy and budget decisions”. When reviewing state statutes for this report, staff used this definition as a guide for determining whether the statute under consideration addressed governance.

A computer search of the Montana Codes Annotated for keywords such as “information technology”, “data processing”, “computer”, “computer system”, “information system”, and “telecommunication” produced over one hundred statutory references. However, only a handful of these references was deemed by staff to address governance. These are presented and discussed in the sections below.

General Oversight

Section 2-17-501, MCA assigns certain governance-related responsibilities to the Department of Administration regarding data processing. Specifically, this statute requires the department to work cooperatively with other state agencies to:

1. Establish policies and a statewide plan for the operation and development of data processing for state government;
2. Review and approve agency specifications and procurement methods for the acquisition of data processing equipment;
3. Review and approve agency specifications and procurement methods for the acquisition of software to ensure network compatibility and conformity with the statewide data processing plan;
4. Review and approve all contracts for private sector data processing services to ensure conformance with the statewide data processing plan and statewide data network; and
5. Operate and maintain a central computer center and a statewide data network for the use of all state agencies and political subdivisions.

This section of law exempts the Office of Public Instruction and the university system from requirements #2 through #4 unless a data processing activity proposed by either of those entities affects the central computer center or the statewide data network. The determination of whether a proposed activity will affect the central computer center or the statewide data network is made by the Office of Public Instruction or the university system.

(This section of law was originally enacted in 1979 with the duties assigned to the Office of Budget and Program Planning. Duties were transferred to the Department of Administration in 1983.)

LFD Observation: There are no substantive requirements for the statewide plan. This contrasts with statutory requirements of the legislative branch computer plan discussed later in the report.

Security

Section 2-17-503, MCA assigns the responsibility for providing centralized management and coordination of state policies for security of data and information technology resources to the Department of Administration and requires the department to:

1. Establish and maintain the minimum security standards and policies to implement 2-15-114, including the physical security of central and backup computer facilities consistent with these standards;
2. Establish guidelines to assist agencies in identifying electronic data processing personnel occupying positions of special trust or responsibility or sensitive locations;
3. Establish standards and policies for the exchange of data between data centers or departments by hardwired or nondedicated telecommunications to ensure that exchanges do not jeopardize data security and confidentiality;
4. Coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;
5. Include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and
6. Upon request, provide technical and managerial assistance relating to the security program.

Executive branch agencies are assigned data and information technology security responsibilities in **Section 2-15-114, MCA**, while the judicial branch is assigned similar responsibilities in **Section 3-2-605, MCA**. The Board of Regents is assigned comparable security responsibilities in **Section 20-25-301, MCA**. The legislative branch was not included in the legislation that contained these security provisions.

(All security provisions were enacted in 1987)

Telecommunications

Section 2-17-302, MCA is another section of statute that gives broad supervisory powers to the Department of Administration for telecommunications, an area that can be defined as information technology. This law states that the department shall:

1. Provide communication services to all agencies of state government. The state communications system must be capable of passing voice, video, data, written information and other forms of communication to and from distant points.
2. Exercise general supervision over all existing communications systems for all agencies of state government;
3. Plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government...
4. Approve standards and procedures for selection, acquisition, and operation of communications equipment;
5. Ensure that all communications equipment is properly maintained.
6. Provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

7. Provide a means whereby political subdivisions of the state may utilize the state communications system, upon terms and under conditions as the department may establish;
8. Accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;
9. Foster the development of new and innovative communications systems and techniques within the state, including but not limited to satellite communications and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.
10. Pay for and allocate to state agencies, as part of services rendered, the cost of any performance audit of the state communications system performed by or at the direction of the legislative auditor.

(Enacted in 1971)

Electronic Access Systems

Sections 2-17-321 through 2-17-323, MCA, provide for the Department of Administration's responsibilities for electronic access systems. The department is directed to establish and maintain electronic access systems for state agencies to use as a means of conveying information to Montana's citizens. Statutory responsibilities include:

1. Setting software standards;
2. Establishing support services;
3. Developing user-friendly file transfer and message systems for entities regularly interacting with state government;
4. Promoting the use of electronic access systems for the purpose of reducing the state's copying and mailing costs,
5. Determining procedures for using electronic access systems, and;
6. Providing security to protect the integrity of its electronic access system.

(Enacted in 1989)

LFD Observation: This section of law directly impacts operation costs of agencies by setting software standards.

Records Management and Storage

Section 2-6-214, MCA places the responsibility of managing the development of records management and storage technology on the Department of Administration by requiring it to:

1. Develop standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods, and
2. Approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized,

optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(Enacted in 1991)

Information Technology Advisory Council

Section 2-17-502, MCA, requires the department of administration to create a state information technology advisory council (ITAC), composed of a diverse group in order to adequately represent the interest of state agencies, the university system, and local governments. Statute requires the advisory council to:

1. Review statewide information and data processing policies;
2. Make recommendations regarding the application of new information processing technology in state government, and;
3. Advise the department on long-term strategic planning for the use of information processing technology in state government.

Statute also requires the advisory council to provide a forum to:

1. Guide state agencies and local governments in the development and deployment of intergovernmental information resources;
2. Encourage cooperative efforts among state agencies and local governments in the development of information resources;
3. Develop and recommend to the department standards and policies for intergovernmental information resources; and
4. Advise the department in the development of cooperative contracts for the purchase of information resources.

While this statute allows other advisory functions to be assigned by the department, the current agency order reestablishing the advisory council for the 2001 biennium includes only the statutory duties delineated in Section 2-17-502.

(Enacted in 1983)

Section 2-15-122(4), MCA notes that advisory councils may be created only for acting in an advisory capacity. Section 2-15-102(1), MCA defines advisory capacity as furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy (emphasis added).

LFD Observations:

- *This statute provides an opportunity for local governments to participate in this process.*
- *There is currently no legislator representation on the advisory council.*
- *Recommendations by this council can impact agency budgets.*

County Motor Vehicle Computer Committee

Sections 61-3-346 through 61-3-337, MCA creates and assigns the duties of the county motor vehicle computer committee. This committee is allocated to the department of justice for administrative purposes. Statute requires the committee to:

1. Establish the requirements and specifications for the county motor vehicle computer system to be used by county treasurers and the department of justice to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles;
2. Approve the purchase of computer equipment, including peripherals, to be used for the registration and re-registration of motor vehicles, boats, snowmobiles, and off-highway vehicles; and
3. Approve the procedures for the development of the county motor vehicle computer system ... and for training in the use of that system.

The statement of intent accompanying the enabling legislation noted “the department shall create a users’ advisory group to assist the department in creating and operating a motor vehicle computer system to be used jointly by the department and county treasurers and their employees. The department shall make policy decisions necessary to develop and implement the computer system jointly with the county motor vehicle computer committee.”

Section 61-3-347(2), MCA, specifically excludes this computer system from the definition of “central computer center” and any implication that the Department of Administration is responsible for establishing policy and operating and maintaining central computer centers.

(Enacted in 1991)

LFD Observation: The exemption that “disconnects” this computer system from the definition of “central computer center” seems to contradict the cooperation between state agencies and local government sought in Section 2-17-502, MCA—the statute establishing the information technology advisory council.

IT Governance in the Legislative Branch

In 1989, the legislature passed HB 496, establishing a planning process for information technology development in the legislative branch of government. Title 5, Chapter 11, Part 4 of Montana Codes Annotated contains the requirements of the legislative branch computer system planning process.

The purpose of the law is to:

1. Establish a mechanism for computer system planning encompassing broad policy needs, long-term direction for computer use, and the effective implementation of a detailed plan for the legislative branch;

2. Assure coordination of information system decisions so that the overall effectiveness of the senate, the house of representatives, and legislative agencies may be improved; and
3. Enhance the coordination of legislative branch systems with executive branch systems wherever possible.

A legislative branch computer system planning council is created and is comprised of legislative staff and a person designated by the department of administration to represent the data processing policy and planning functions of the department, who serves as a nonvoting member of the planning council. This planning council has several duties assigned by law, including:

1. Developing and maintaining a legislative branch computer system plan. In developing and maintaining this plan, the planning council shall:
 - (a) Continuously review or have reviewed existing information systems that are candidates for automation or enhancement, as well as review existing automated systems that may be improved or integrated with new applications;
 - (b) Develop and maintain a description of functions or services in the legislative branch and its agencies that would, through application or improvement of computer technology, provide better service to members of the legislature, legislative agencies, and the public.
 - (c) Develop and maintain a ranking of needs, taking into consideration the relative effectiveness and probable cost of alternative systems; and
 - (d) Develop and maintain recommended system standards for the legislative branch and standard or custom software and hardware solutions appropriate to the needs and environment of the legislative branch and its agencies.
2. To the extent possible:
 - (a) Future applications should be explicitly identified in the plan;
 - (b) Current applications should allow a high degree of flexibility so that future applications are not limited; and
 - (c) Both current and future applications should be coordinated and compatible with the standards and goals of the executive branch established under 2-17-501 through 2-17-503, as well as the legislative branch standards developed in accordance with the requirement in subsection (1)(d).

The Legislative Branch computer system plan is updated every two years, in conjunction with the biennial budgeting process. Statute requires the legislative council to review and approve the plan. Statute also requires the legislature and its agencies to conform to hardware and software standards established in the legislative branch computer system plan in effect at the time the purchasing decision is made.

LFD Observation: This section applies to the legislative branch only. Do the previously referenced statutes apply to the legislative branch? Should other statutes specifically exclude the legislative branch? Should this section serve as a model for all of state government?

Other Advisory Councils

At its October 1999 meeting, the subcommittee heard a detailed presentation by the Department of Administration discussing advisory groups in addition to ITAC. The information presented by the department is summarized in Table 1.

TABLE 1. IT-RELATED ADVISORY COUNCILS				
Name	Yr Estab.	Function	Authorization	Budgetary Role
Information Technology Managers Council (ITMC)	1989	Coordinate management of technical environments within agencies	Agency Order	Advisory to department management
SummitNet Executive Council (SEC)	1995	Address policy level telecommunications issue	Executive Order of the Governor	Data communications initiative development and priority determination (advisory)
Montana Geographic Information Council (MGIC)	1997	Address policy level geographic information issues	Executive Order of the Governor	GIS initiative development and priority determination (advisory)
Montana Public Safety Communications Council (MPSCC)	1997	Policy level direction for a statewide public safety communications system	Executive Order of the Governor	Statewide system legislative initiative development (advisory)
9-1-1 Advisory Council	1985	9-1-1 emergency services policy issues; strategic directions	Section 10-4-102(2), MCA	Advisory to the Department of Administration

INFORMATION TECHNOLOGY BUDGETING

Statutes

Statutes addressing Montana's budgeting process are contained in Title 17, Chapter 7, Part 1. There are no direct references to information technology in these statutes. However, there is an indirect reference. The Information Services Division (ISD) of the Department of Administration is in the business of providing IT services to state agencies. ISD recovers its costs of providing services through rates charged to user agencies. **Section 17-7-123(6)(b), MCA**, requires the Executive Budget to include a report on fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balance. Further, fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act and fees and charges cannot exceed the level approved by the legislature for that biennium.

Section 17-7-123(7), MCA, is a "catchall" provision that requires the Executive Budget to include "any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst". Although specific information technology budget information has not been an item agreed to by the budget director and the legislative fiscal analyst since this provision was enacted (1997), the law does allow this flexibility.

LFD Observation: The "IT Budget Information Proposal" presented to the IT Management Subcommittee at its December 1999 meeting has been agreed to, in concept, by the Office of Budget and Program Planning and may be construed as other financial or budgetary material in this catchall provision.

Appropriation Law

Finally, **Section 12(2) of House Bill 2** passed by the 56th Legislature contains the provision for the OBPP to present IT budget information to the legislature in the format recommended by the legislative finance committee. **Section 9** of the same House Bill 2 requires a unified computer budget summary report be provided to the legislature no later than November 15, 2000, with expenditure categories included by mutual agreement with the legislative fiscal analyst, the legislative finance committee, and the office of budget and program planning.

GENERAL OBSERVATIONS

Staff offers several observations in the following paragraphs regarding current Montana statutes addressing information technology governance, planning, and budgeting.

Observation #1: There is no language in statute that guides the overall, statewide development of IT in Montana. Other states have developed and put into statute a vision of, and/or guiding principles for, the development of information technology as a state resource.

Observation #2: There is no high level, statewide review of IT development required in statute. Other states have enacted laws requiring the formation of an IT commission that performs high level reviews, with representation from all three branches of government, local government, and the private sector. Some states have also opted for a cabinet-level organization that manages and oversees the development of IT as a state resource.

Observation #3: There is no legislative oversight or legislative review requirement or process in statute that addresses information technology. A notable exception to this is the statutory requirement for the Legislative Branch to develop a computer plan that contains certain information as specified in statute.

Several states have enacted laws inserting the legislature into the IT decision making process much sooner than the budget setting process during a legislative session.

Observation #4: State statute is inconsistent regarding IT planning. State plan requirements vary by branch of government – The legislative branch has substantive requirements for its computer plan; the executive branch is required to have a statewide plan but no requirements are listed in statute, and; the judicial branch has no statutory requirement for a state plan.

Observation #5: State statute is unclear regarding the terms “state agencies” and “agencies of state government” as used in statutes that address general data processing oversight and centralized security responsibilities, telecommunications, electronic access systems, and records management. These terms are not specifically defined in sections assigning the referenced IT-related responsibilities, nor is either of these terms generally defined in Title 1 or Title 2 of the Montana Codes Annotated.

Observation #6: The Department of Administration, with advice from its advisory councils, make most of the IT type decisions that have statewide impact.

Observation #7: The decisions the Department of Administration does make can have significant budgetary impacts.

Observation #8: There is no provision in Montana statutes that connects information technology planning to the biennial budget process.

Observation #9: Local governments are sometimes included in IT governance-related statutes and other times are not.